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**Before the
FEDERAL COMMUNICATIONS COMMISSION**

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**In the Matter of)
Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc. And)
BellSouth Long Distance, Inc.,)
for Provision of In-Region, InterLATA)
Services in Louisiana)**

CC Docket No. 97-231

REPLY COMMENTS OF

THE CONSUMER FEDERATION OF AMERICA

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DECEMBER 19, 1997

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I. OVERVIEW AND RECOMMENDATION

The Consumer Federation of America (CFA) respectfully submits these comments in the proceeding to evaluate BellSouth Telecommunications' (BST) request to provide in-region, interLATA long distance service in Louisiana¹ under section 271 of the Telecommunications Act of 1996 (the Act).² We urge the Federal Communications Commission (FCC) to deny that request.

A. THE ARGUMENTS FOR BOC ENTRY INTO LONG DISTANCE BEFORE FULL COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT ARE CONTRADICTED BY THE EMPIRICAL FACTS, ECONOMIC REASONING AND LEGAL PRINCIPLES

BellSouth's (BST) petition for interLATA entry in Louisiana is blatantly deficient. BST and the Louisiana Public Service Commission (LPSC)³ have simply ignored the carefully crafted guidelines that the FCC and Department of Justice (DOJ) have provided to the Regional Bell Operating Companies (RBOCs) as a road map to section 271 compliance.⁴ BST fails every test

¹Federal Communications Commission, In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in Louisiana, CC Docket No. 97-231, November 6, 1997.

²47 U.S.C. section 271.

³"Comments of the Louisiana Public Service Commission," In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in Louisiana, CC Docket No. 97-231, November 24, 1997.

⁴The Department of Justice ("Evaluation of the United States Department of Justice," In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in Louisiana, CC Docket No. 97-231, December 10, 1997, hereafter, DOJ Louisiana) notes several instances in which BST and the LPSC have ignored the Commission's ruling, for example it notes

BellSouth asserts that it has met the checklist and public interest requirements of section

established by the Act.

- o BST does not face any facilities-based competition in the residential sector and its market has not been irreversibly opened to competition (see Chapter III).⁵
- o BST has failed to offer and the LPSC has failed to require BST to make interconnection, unbundled elements and resale available to competitors on rates, terms and conditions that are just, reasonable and non-discriminatory (see Chapter IV and Attachment 2, Chapter IV).⁶

271, but that assertion rests in large measure on BellSouth's view as to the nature of those requirements -- a view that is often at odds with the plain language of the statute and with the Commission's prior decisions, as well as the Department's competitive standard. (P. 3)

BellSouth places great weight upon the findings of the LPSC that its OSS satisfied that checklist. We find the LPSC determination to be unpersuasive for several reasons. First, the LPSC's determination was not based on the Commission's approach for accessing checklist compliance. Second, the LP SC did not articulate the analysis it performed in assessing OSS compliance, so that it is difficult to ascertain the basis for its conclusion on OSS or its reasons for rejecting the recommended decision of the Chief Administrative Law Judge (ALJ) that did discuss OSS issues at length and found significant deficiencies. Third, it appears that the LPSC recommendation was promised, at least in part, on a technical demonstration held on August 13th as opposed to a more thorough assessment of performance parity and operational readiness through internal testing evidence, carrier-to-carrier testing, and performance indicators reflective of actual use. Finally, BellSouth's OSS are operated on regional, rather than a state-by-state, basis and other state Commissions in BellSouth's region and concluded that the same systems approved by the LPSC were insufficient. (p. 18)

⁵DOJ Louisiana, p. iii.

At this time, BellSouth faces no significant competition in local exchange services in Louisiana. Lacking this best evidence that the local market has been opened to competition, the Department cannot conclude that its competition standard is satisfied unless BellSouth shows that significant barriers are not impeding the growth of competition in Louisiana. BellSouth has not done so in this application.

⁶Chief Administrative Law Judge, Valerie Seal Meiners, "Recommendation," In Re: Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996, including, but not limited to, the fourteen requirements set forth in Section 271 (c)(2)(B) in order to verify compliance with Section 271 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region, Docket No. U-22252, August 14, 1997.

- o BST has refused to establish the affiliate safeguards required by section 272 of the Act (see Chapter V and Attachment 1, Chapter VI).
- o BST's premature entry into interLATA long distance is not in the public interest and BST's analysis of the public interest standard is fundamentally flawed (see Chapter II and Attachment 1, Chapter II, Chapter VII).⁷

Our recommendation that the FCC reject BST's application is based on the extensive

Accordingly, the Commission interprets the Act to require that BellSouth demonstrate through evidence of actual implementation and/or the results of reliable testing, that each checklist requirement is met, and that BellSouth is truly able to provide each of the required items in Louisiana in reliable fashion.

Thus, in addition to determining whether BellSouth is truly capable of providing each of the required items in Louisiana in a reliable fashion (the "generally offering" standard), the Commission is also called upon to determine whether BellSouth can and is offering each of the required items in a non-discriminatory fashion, such that competing providers have substantially the same access to BellSouth's network elements as BellSouth itself has...

Based on the evidence presented at the hearing in this matter, the Commission is not convinced that BellSouth's operation support system can actually provide, at this time, non-discriminatory access to new entrants. Although BellSouth presented testimony that it has conducted internal testing of its interfaces, no evidence of the results of any testing were presented to the commission...

The Commission is similarly unconvinced, from the record in this proceeding, that BellSouth interfaces allow equal, non-discriminatory access to BellSouth's databases, from a time spent perspective.

⁷DOJ Louisiana, p. 33

BellSouth erroneously contends, as it did in South Carolina, that the benefits of allowing entry now into the interLATA market in Louisiana warrant approval of this application under the "public interest" standard. BellSouth and its economic experts significantly overvalue the benefits of the BOC's long distance entry now, and virtually ignore the benefits to be gained from opening BellSouth's local markets.

analysis presented in these comments. Based upon the state⁸ and region-wide⁹ evidence on BST performance of the requirements of section 271, we believe that BST falls far short of meeting the conditions for entry into in-region long distance. This conclusion has been reached, not on the basis of legal technicalities or nit picking objections, but very severe problems in BST's implementation of the 1996 Act. The problem in BST's application run a wide gamut from fundamental legal problems, to operational difficulties, to very severe weaknesses in BST's provision of access to the public switched network.

This view has been supported and documented throughout the BST region, not only by potential competitors, but also public utility commissions, attorneys general, consumer advocates, the Department of Justice, and the FCC (see Table 1).

⁸In addition to the official recommendations and orders cited throughout these comments, CFA has reviewed the complete filing of BellSouth both in Louisiana and at the FCC, as well as the comments of the intervenors in both proceedings.

⁹CFA has relied on several major reviews throughout the BellSouth region. Specifically in these comments are In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C. "Brief of the Consumer Advocate," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C (hereafter, Consumer Advocate); "Testimony of Allen Buckalew," In the Matter of: BellSouth Telecommunications, Inc. Application for Authority to Provide In-region InterLATA Service on Behalf of the Consumer Advocate, Before the Public Service Commission of the State of South Carolina, Docket NO. 97-101-C (hereafter, Buckalew). Department of Justice, "Evaluation of the United States Department of Justice," Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, September 30, 1997 (hereafter, DOJ BST). "Appendix A: Wholesale Support Process and Performance Measures," and "Marius Schwartz, "The "Open Local Market Standard" For Authorizing BOC InterLATA Entry: Reply to BOC Criticisms," which is Exhibit 2 of the DOJ evaluation (hereafter, Schwartz). Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997(hereafter, Florida Staff).

TABLE 1
CONSUMER PROTECTION AND REGULATORY AGENCIES
REJECTING BELL SOUTH EARLY ENTRY INTO LONG DISTANCE

| STATE | ENTITY REJECTING | ENTITY APPROVING |
|----------------|------------------|------------------|
| ALABAMA | PUC | NONE |
| GEORGIA | PUC | NONE |
| FLORIDA | PUC | NONE |
| LOUISIANA | PUC STAFF, ALJ | PUC |
| SOUTH CAROLINA | CA, DOJ, FCC | PUC |

B. PROMOTING LOCAL COMPETITION IS THE KEY TO THE 1996 ACT

No one expected the RBOCs to like the section 271 process -- companies do not give up a monopoly willingly. Congress imposed a substantial set of requirements because it knew that the monopoly would be difficult to dismantle (see Table 2). The DOJ, the FCC, and state regulatory authorities must stand firm in the face of the refusal of the RBOCs to comply with the law. Withholding section 271 approval is the last chance for local competition, the only tangible incentive the RBOCs have to irreversibly open their markets to competition.

Holding the line on local competition is the central task before regulators. Irreversible competition for local telecommunications service does not now exist, particularly for residential customers. Should RBOC practices persist, there will continue to be little chance for meaningful local competition to develop for residential customers. The evidentiary record demonstrates not only that there is no real competition for residential ratepayers, not only that RBOCs have failed to meet the requirements of the Act, but that they have been actively creating severe problems for potential competitors.

TABLE 2
SUBSTANTIVE CONDITIONS FOR APPROVING RBOC
ENTRY INTO IN-REGION, INTERLATA LONG DISTANCE

| <u>SECTION 271 [c](1)</u> | <u>SECTION 271 [c](2)</u> | <u>SECTION 272</u> | <u>SECTION 271 [d](3)</u> |
|--|---|--|--|
| PROVIDE ACCESS AND INTERCONNECTION TO FACILITIES-BASED COMPETITOR | PROVIDE 14 POINT CHECK LIST ITEMS | SATISFY 272 REQUIREMENT | IN THE PUBLIC INTEREST |
| TRACK A OR TRACK B | FULL IMPLEMENTATION OF NON-DISCRIMINATION RATES, TERMS, CONDITIONS AND PROTECTIONS | | |
| TRACK A: IS PROVIDING ACCESS AND INTERCONNECTION TO NETWORK FACILITIES FOR THE NETWORK FACILITIES OF ONE OR MORE UNAFFILIATED COMPETING PROVIDERS OF TELEPHONE EXCHANGE SERVICE TO RESIDENTIAL AND BUSINESS SUBSCRIBERS. | INTERCONNECTION IN ACCORDANCE WITH SECTIONS 251 [C] (2) AND 251 [D](1) 1) NON DISCRIM. IN ACCORDANCE SECTION 251 [C](3) AND 251 [D](1) 2) NON-DISCRIM. ACCESS TO POLES 3) LOCAL LOOP 4) LOCAL TRANSPORT 5) LOCAL LOOP 6) LOCAL SWITCH 7) NON-DISCRIM 11 & E911 DIRECTORY OPERATOR 8) WHITE PAGES 9) NON-DISCRIM. NUMBERING 10) NON-DISCRIM DATA BASES 11) INTERIM NUMBER PORTABILITY 12) NON-DISCRIM. LOCAL DIALING PARITY 13) RECIPROCAL COMPENSATION UNDER SECTION 252 [D](2) 14) RESALE UNDER SECTIONS 251[C](4) AND 252[D](2) | SEPARATE AFFILIATE STRUCTURAL AND TRANSACTIONAL REQUIREMENTS NON-DISCRIM. SAFEGUARDS BIENNIAL AUDIT FULFILLMENT OF REQUESTS PROHIBITION ON JOINT MARKETING | PUBLIC INTEREST, CONVENIENCE AND NECESSITY COMPETITIVE TEST DANGEROUS PROBABILITY TO SUBSTANTIALLY IMPEDE COMPETITION VIII[C] TEST ANY OTHER STANDARD SUBSTANTIAL EVIDENCE OTHER FACTORS QUALITY CONSUMER PROTECT RATE STRUCTURE |
| TRACK B: IF NO SUCH PROVIDER HAS REQUESTED THE ACCESS & INTERCONNECTION IN TRACK A OR FAILED TO NEGOTIATE IN GOOD FAITH, UNDER SECTION 252 OR VIOLATED TERMS OF AN AGREEMENT UNDER SECTION 252 THEN: STATEMENT OF GENERALLY AVAILABLE TERMS APPROVED BY STATE COMMISSION | | | |

The FCC must continue to reject the RBOC applications until the RBOCs get it right. This is not, and must not be, a war of attrition, as some have suggested,¹⁰ in which the FCC will eventually say "yes" because it is too tired to keep saying "no."

- o The benefits of local competition are overwhelming.
- o The policy path to local competition and long distance entry is clear in the law.
- o The form and substance of the process have been well defined and articulated by the FCC and the DOJ.
- o The substance and process have been supported by a wide array of state officials and public interest groups.

Regulators must stay the course, if the competitive promises of the Act are to be realized.

C. QUALIFICATIONS

Founded in 1968, the Consumer Federation of America (CFA) is the nation's largest consumer advocacy group. Composed of over 250 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, CFA's purpose is to represent consumer interest before the congress and the federal agencies and to assist its state and local members in their activities in their local jurisdictions.

CFA has two decades of experience, interest and involvement in telecommunications policy at the federal and state levels. CFA has participated in virtually every major regulatory proceeding affecting residential consumers at the FCC in the past decade. CFA has conducted major studies on telecommunications infrastructure, universal service, and competition policy. It

¹⁰Washington Post, November 3, 1997, B-1.

has participated in court proceedings involving all aspects of telecommunications policy.

CFA has also been actively involved in the section 271 process. CFA member groups have been monitoring and participating in section 271 proceedings in a number of states.¹¹ CFA has filed comments at the state and federal levels.¹² Moreover, CFA has devoted substantial effort to reviewing the general evidence that has developed in section 271 applications.

D. OUTLINE

The comments are divided into three parts -- the comments themselves in Part I and two Attachments, contained in Parts II and III.

Part I gives an overview of the case against BST entry into in-region interLATA long distance in Louisiana.

Part II is an attachment which presents a review of the legal and regulatory framework for deciding section 271 requests that had developed up until the time of the filing of the S.C. court challenge to section 271.¹³ In these comments, we base our analysis on the approach developed by a series of consumer protection, regulatory, and anti-trust authorities prior to the S.C. court challenge. Up to that point, the DOJ, the FCC, and a number of Attorneys General had

¹¹For example, the Consumer Federation of Michigan filed extensive comments in the Ameritech Michigan Application (see Part II, below). The Florida Consumer Action Network (FCAN) has been active in the 271 process. Consumer's Union has been active at both the federal and state levels (e.g. Texas).

¹²"Comments of the Consumer Federation of America," before the Federal Communications Commission, In the Matter of Application by BellSouth Corporation, et. al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, November 14, 1997.

¹³S.C. Communications Inc., Southwestern Bell Telephone Company, Southwestern Bell Communications Services - Texas, Inc., Pacific Bell, Pacific Bell Communications, and Nevada Bell, v. Federal Communications Commission and United States of America, Northern District of Texas, Wichita Falls Division, Civil Action No. 7-97CV-163-X, August 2, 1997.

articulated a comprehensive and legally well grounded view of section 271 that furthered the clear intention of the Act to use the section 271 process to ensure competition in local telecommunications markets.

The S.C. court case marks a turning point in the section 271 process since it appears that with that challenge, the attitude of some of the Regional Bell Operating Companies changed. When it became clear that these authorities intended to give teeth to section 271, several of the RBOCs appear to have decided not to comply. In addition to attacking the law in court, the RBOCs began to blame the failure of local competition on everyone but themselves and brought forward clearly deficient applications, more intended to see what they could get away with than complying with the Act.

Part III is an attachment which presents a series of citations from the public interest evaluations of the BST South Carolina application and BST policies and practices region-wide that support our recommendation that its application be rejected. As with our overall framework for analysis, we have based our evaluation of the compliance of BellSouth Telecommunications with the section 271 requirements and our recommendation for denial of that application on positions taken only by third parties with no commercial interest in the outcome, but a charge to protect the consumer and public interest. Throughout these comments we rely only on the conclusions of anti-trust authorities, regulators, People's Counsels, and public interest groups. In the case of Louisiana specifically, we rely on three primary sources --

- o the opinion and testimony of the staff¹⁴ and administrative law

¹⁴"LPSC Staff Post Hearing Brief," In re: Review and consideration of BellSouth's TSLRIC and LRIC cost studies submitted per Section 901.C and 1001.E of the LPSC Local Competition Regulations in order to determine the cost of interconnection services and unbundled network elements to establish

judge¹⁵ which addresses primarily the problem of just, reasonable and non-discriminatory access to the check list items

- o the evaluation of the U.S. Department of Justice, which has stressed the competitive aspect of the filings, and
- o the evaluation of the Florida public service commission staff of BST's technical and operational systems, which addresses the details of BST's compliance with the Act.¹⁶

It is obvious why the opinion of the Louisiana staff and the Administrative Law Judge and the DOJ are important. The reason we rely on the Florida staff evaluation is simple and equally important, but perhaps less obvious. BellSouth has declared that its systems and procedures for implementing section 271 are region-wide. As the Florida staff analysis puts it:

Staff notes that BellSouth's witness Milner testified that BellSouth systems are region-wide.

In some cases a given resold service or unbundled network element is not in service in Florida,... Availability in Florida, though, is evidenced by BellSouth providing the resold service or unbundled network element in any of the nine states in its region. This is because BellSouth uses the same processes in Florida as in the

reasonable, non-discriminatory, cost-based tariffed rates; (consolidated with) In Re: (DocketU-22093) Review and consideration of BellSouth's tariff filing per Section 901 and 1001 of the LPSC Local Competition Regulations, which tariff introduces interconnection and unbundled services and establishes the rates, terms and conditions for such service offerings.

¹⁵Chief Administrative Law Judge, "Final Recommendation," In re: Review and consideration of BellSouth's TSLRIC and LRIC cost studies submitted per Section 901.C and 1001.E of the LPSC Local Competition Regulations in order to determine the cost of interconnection services and unbundled network elements to establish reasonable, non-discriminatory, cost-based tariffed rates; (consolidated with) In Re: (DocketU-22093) Review and consideration of BellSouth's tariff filing per Section 901 and 1001 of the LPSC Local Competition Regulations, which tariff introduces interconnection and unbundled services and establishes the rates, terms and conditions for such service offerings.

¹⁶Division of Communications and Division of Legal Services, Florida Public Service Commission, Memorandum, Docket No. 960786-TL - Consideration of BellSouth Telecommunications Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, October 22, 1997(hereafter, Florida Staff).

other states in BellSouth nine-state region to respond to requests from ALECs for resold services, unbundled network element, and interconnection agreements.¹⁷

In essence, BST says that it is doing the same thing in all the states. Florida is the place to start with and must play a central role in any evaluation of BST's region-wide operation for a number of reasons.¹⁸

- o Florida is by far the largest state in the BST region and substantial resources were devoted to the matter on all sides in this state.
- o The Commission held a full evidentiary hearing with discovery and cross examination.
- o The staff has taken the task of reading the hearing record seriously,

¹⁷Florida Staff, p. 165.

¹⁸The Department of Justice has made a similar observation on the relevance of region-wide evaluation of certain functionalities and policies. DOJ BST, p. 15... Appendix a, pp. 7-8, puts it as follows:

However, some checklist determination -- such as determinations on OSS issues, where each of the BOCs generally has employed a single region wide system -- may as a practical matter require determinations that affects states throughout a BOCs entire region. In considering such issues, the Commission may confront situations in which one state conclude that a BOC's OSS arrangements comply with the checklist, while another state examining the same arrangements finds checklist deficiencies. The Department will apply a uniform standard for all states in a BOCs region and a uniform standard that applies to all BOCs...

BellSouth's processes are operated on a regional, rather than a state-by-state basis, and thus our analysis is not limited to South Carolina activities. Satisfactory performance in the other states will be recorded as evidence that the same systems will work satisfactorily in South Carolina, unless there are specific reasons to conclude otherwise. Conversely, if a problem exists with BellSouth's processes in another state, we assume that the problem exists in South Carolina unless shown otherwise.

Second, the Department notes that BellSouth processes are operated on a regional basis, rather than a state-by-state basis, and that not all state commissions in BellSouth's region are equally satisfied with BellSouth systems and the access to those systems that BellSouth presently providing to CLECS.

interpreted the Act with good common sense, understands the huge stake that the public has in launching local competition on a secure footing, and has analyzed the issues with care and professionalism.

- o The hearing record and the staff report make direct reference to examples of practices in several other states in the region, thereby verifying that the practices are region-wide. In fact, the staff analysis in several other BST states has reached similar conclusions as in Florida and recommended denial of section 271 applications.

Unfortunately, the LPSC chose not to make a thorough evaluation of the technical capabilities and commercial readiness of the BST systems.¹⁹ It cites only a non-commercial, restricted demonstration of technical functions as evidence that BST has met the requirements of non-discriminatory access to interconnection, unbundled network elements, and resale.²⁰ The standard used by LPSC falls far short of the standard recommended by the Department of Justice and adopted by the FCC.

¹⁹See DOJ Louisiana, pp. 3, 18. ALJ Checklist Recommendation recognized that the technical demonstration fell outside of the evidentiary process.

²⁰DOJ Louisiana, p. 18.

II. LOCAL COMPETITION AND LONG DISTANCE ENTRY

The primary purpose of the Telecommunications Act is to introduce competition into all telecommunications markets and thereby deliver competitive benefits to consumers. The Conference Report gives the purposes of the Act in the opening sentence as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to Bill (s.652), to provide for a procompetitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and service to all American by opening all telecommunications markets to competition and for other purposes, having met, after full and free conference, have agreed...²¹

Because of the pervasive market power of the ubiquitous, interconnected telecommunications network, Congress imposed a wide range of regulatory requirements on the RBOCs before they would be allowed to enter into in-region long distance. Part II of the Act, entitled "Development of Competitive Markets" is devoted almost entirely to opening of local markets. Part III of the Act, "Entitled Special Provisions Concerning Bell Operative Companies," which includes section 271, deals almost entirely with the additional steps Bell Companies must take in opening their markets before they are allowed into in-region long distance.

In light of this structure of the Act, the Department of Justice has succinctly summarized the public policy balance that Congress struck in the 1996 Act when it addressed the issue of RBOC entry into in-region long distance.

²¹Conference Report on the Telecommunications Act of 1996, No. 104-458, p. 1.

InterLATA markets remain highly concentrated and imperfectly competitive, however, and it is reasonable to conclude that additional entry, particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits.

But Section 271 reflects Congressional judgements about the importance of opening local telecommunications markets to competition as well. The incumbent local exchange carriers (LECs), broadly viewed, still have virtual monopolies in local exchange service and switched access, and dominate other local markets as well. Taken together, the BOCs have some three-quarters of all local revenues nationwide, and their revenues in their local markets are twice as large as the net interLATA market revenues in their service areas. Accordingly, more considerable benefits could be realized by fully opening the local market to competition.²²

In short, Congress recognized that opening the local monopoly to competition was far more difficult and important than adding more competition in the long distance market. The BellSouth application tries to reverse that public policy, claiming that long distance entry should come first. The argument is unsupportable, based on a series of misleading empirical analyses.

A. FACILITIES-BASED COMPETITION IN THE LOCAL MARKET

1. WIRELINE FACILITIES-BASED COMPETITION

The first requirement that Congress placed on BOC entry into in-region long distance was to insist that there be a facilities-based competitor to the incumbent RBOC before it would be allowed to enter the in-region, interLATA market. This was the first condition set on entry and has come to be known as Track A. Congress required a facilities-based competitor for both residential and business customers.

²² "Evaluation of the United States Department of Justice, Federal Communications Commission, In the Matter of Application of S.C. Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Oklahoma, CC Docket No. 97-121, May 16, 1997 (hereafter, DOJ, S.C.), p. 4.

Throughout the hearing process in Louisiana, BellSouth conceded that facilities-based competition in Louisiana sufficient to meet the section 271 (C)(1)(A) standard -- the track A standard -- did not exist. The ALJ in the proceeding pointed out that BellSouth had not executed an interconnection agreement with any facilities-based competitor seeking to provide local exchange service even though a request had been made.²³ BST appeared to be proceeding under the banner of a Track B application. Even in its application, BST admitted it did not know whether facilities-based competition exists.²⁴

²³ ALJ, Checklist Recommendation.

There was no question, at least that the time of the hearing, that BellSouth is not currently providing interconnection within Louisiana, although a ACSI has ordered interconnection trunks. Thus, to demonstrate its capabilities with regard to interconnection, BellSouth must necessarily look to its entire region for examples.

²⁴BST Louisiana, pp. 17...18, asserts it is hard to find information on competitors and then attempts shift the obligation to demonstrate competition to the Commission, rather than take it on itself. BST identifies companies that say they might someday provide facilities-based competition if the conditions are right.

ACSI provides exchange access over its own networks in New Orleans, Baton Rouge and Shreveport... ACSI's tariff offers service to business and residential customers, although ACSI's rates are priced to compete with BellSouth's business rates and it is unclear whether any residential customer has taken ACSI up on its tariff offerings.... Nevertheless, ACSI has told this Commission that it "will provide facilities-based services to residential callers through MDUs [Multiple Dwelling Units] and STS [Shared Tenant Services] providers where it makes economic sense.

It is quite ironic that BST, who chastise competitors for holding back, the cites their promises to enter as grounds for concluding that facilities base competition exists. It is especially ironic that BST would cite ACSI's statement as evidence facilities-based competition is coming since the issues contested in this proceeding, laid out by ACSI both in Louisiana and before the FCC go to the heart of the question of whether or not BST is willing to make interconnection, unbundled network elements and resold services available on rates terms and conditions that make economic sense. ACSI has urged the Commission to reject BST's application because the rates terms and conditions in the do not make economic sense. "Opposition of ACSI," In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Service in Louisiana, CC Docket No. 97-231, November 25, 1997.

2. MISREPRESENTATION OF PCS AS A COMPETITOR TO LOCAL WIRELINE SERVICE

At the last moment, BST came up with the novel argument that PCS service is competitive with local exchange service. Since it had signed interconnection agreements with three PCS companies, it claimed them as facilities-based competitors. BST loudly trumpeted the claim that PCS is a facilities based competitor of local telephone service.²⁵ The argument is legally incorrect; BST's empirical analysis is grossly misleading.

The legal argument that PCS must be considered a competitor rests on the fact that the statute expressly excluded cellular from being considered a facilities based competitor. Having failed to exclude PCS, BST asserts that Congress intended to include it. BST further argues that the service does not have to. This does not mean that any other technology should be automatically considered a competitor, regardless of its technological, functional, or economic characteristics. In fact, the only facilities based competitor actually mentioned by the Conference report was cable TV.²⁶

Not only does the law not automatically make PCS a competitor, but current regulation precludes that conclusion. The FCC has determined that PCS is not a substitute for local exchange service.²⁷ BST's efforts to shoehorn PCS into the definition of a facilities based

²⁵BST press statement, November 6, 1997, Communications Daily, November 6, 1997, Huber, p. ii.

²⁶Conference Report, p. 148.

²⁷Federal Communications Commission, Second Annual Report: Competition in the Commercial Mobile Radio Services, March 25, 1997.

competitor involves asking the Commission to misapply the law²⁸ and ignore the economic facts.²⁹

The LPSC has the authority to find PCS to be local exchange service, but it has not done so. It would have to base such a conclusion on an evidentiary record.

BST effort to read the legislative history as supporting a narrow definition of competing provider flies in the face of the report language that clearly seems to contemplate a broad offer of service to the public.

The House has specifically considered how to describe the facilities-based competitor in new subsection 271(c)(1)(A). While the definition of facilities-based competition has evolved through the legislative process in the House, the Commerce Committee Report (House Report 104-204 Part I) that accompanied H.R. 1555 pointed out that meaningful facilities based competition is possible, given that cable services are available to more than 95 percent of the United States homes. Some of the initial forays of cable companies into the field of local telephony therefore hold the promise of the sort of local residential competition that has consistently been contemplated. For example, large, well established companies such as Time Warner and Jones Intercable are actively pursuing plans to offer local telephone service in significant markets. Similarly, Cablevision has recently entered into an interconnection agreement with New York Telephone with the goal of offering telephony on Long Island to its 650,000 cable subscribers.³⁰

As we show below, PCS costs the average residential consumer 15 to 20 times more than BOC local exchange service costs and is attractive to less than one-half of one percent of

²⁸BST Application, p. 11

The Commission recently held that cellular and PCS service are "telephone exchange service." Although it relied expressly upon section 3(47)(B) -- which is not relevant under section 271 (c)(1)(A) -- the Commission implicitly relied on 3(47)(A).

²⁹BST Application, p. 16, where BST argues that there is no economic standard to be applied in assessing whether a service is a competing provider

Even if the Commission wrongly read the term "competing provider" to require economic comparability of the sort originally proposed by the House Commerce Committee.

³⁰Conference Report, p. 148.

residential subscribers. This hardly seems consistent with this broad view of "meaningful facilities-based competition" referred to in Conference Report.

It may be that PCS could become a competitor to local exchange service. Ultimately, the functional and economic characteristics of PCS will determine whether it is a competitor. BST has not made that case.

In order to demonstrate that PCS is a competitor of local exchange service, BST attempts to argue that PCS is price competitive with landline telephone service. The demonstration fails. PCS is much more expensive than basic local service and priced in a fundamentally different fashion.

- o The basic monthly charge for PCS offerings in Louisiana are at least 50 percent higher than BST's local exchange service.
- o PCS service is measured service, local exchange service is generally flat rate.
- o PCS charges not only for outgoing calls, but also for incoming calls, which is never the case wireline service.

Given the clearly different pricing levels and pricing structures for the two services, BST bases its argument on a package of services which includes not only basic local and intraLATA toll, but also virtually all enhanced services (call waiting, call forwarding, speed dialing, etc.). Using this complete package, BST claims that there are some customers, who could save money by switching to PCS to replace land line services.

Unfortunately for BST's argument, any such customers are a very peculiar and irrational lot. The customers who are the market for PCS as a substitute for local exchange service would have the following characteristics:

- o Subscribe to basic service,
- o Take an unlimited intraLATA long distance calling plan,
- o Take a full package of vertical services including call waiting, call forwarding, speed calling, etc., and
- o Almost never use the phone or any of the services for which they are paying.

Once a customer uses the phone to make and receive more than one call per day, PCS is more expensive. Why people who barely ever use the network would need all the enhanced services is hard to imagine. Indeed, a service like call waiting would be useless, since there is almost no chance that the line would be busy when a second call is received. Such irrational behavior cannot be assumed to prevail in the marketplace and BellSouth's claim to entry based on this assumption should be rejected.

The consulting report submitted with the BellSouth application concluded that

At "high" levels of usage of local and intraLATA toll service (e.g., 150 or more combined outgoing minutes or 300 or more combined O&I [outgoing and incoming] minutes), BST's wireline Are PLUS plus Complete service plan is less expensive than any of the PCS options and will be preferred.³¹

To label 300 minutes of local incoming and outgoing usage as "high" is absurd. At four minutes per call, this equals 75 call per month, or one incoming and one outgoing call per day. Average usage is close to ten times as high when incoming and outgoing usage are combined.³²

The report includes a graph which tries to show the frontier of usage along which PCS

³¹MARC, Louisiana PCS Study, November 4, 1997, p. 5.

³²The FCC (Competition in the Commercial Mobile Radio Services), p. 54, mentions 1000 minutes of local use per month. This is outgoing calls, and suggests 2000 minutes of outgoing and incoming calls. To this must be add intraLATA usage.

becomes attractive. The chart which results from this analysis is labeled not to scale, so it gives no hint of how absurd it is to argue that PCS is a competitor of local land line service (see Figure 1). When the chart is drawn to scale, it turns out that PCS is likely to be attractive to less than one half of one percent of customers. Even that is highly unlikely, since the cost of the telephone set is not included and the switch to measured service for outgoing calls is resisted by consumers, not to mention measured service for incoming calls.³³

For the average consumer, PCS is out of the question as a substitute for local exchange service. The average monthly bill would on the order of \$500 for local and intraLATA calling. This compares to an average monthly bill at present of \$25-30 for basic service, intraLATA toll and vertical service.

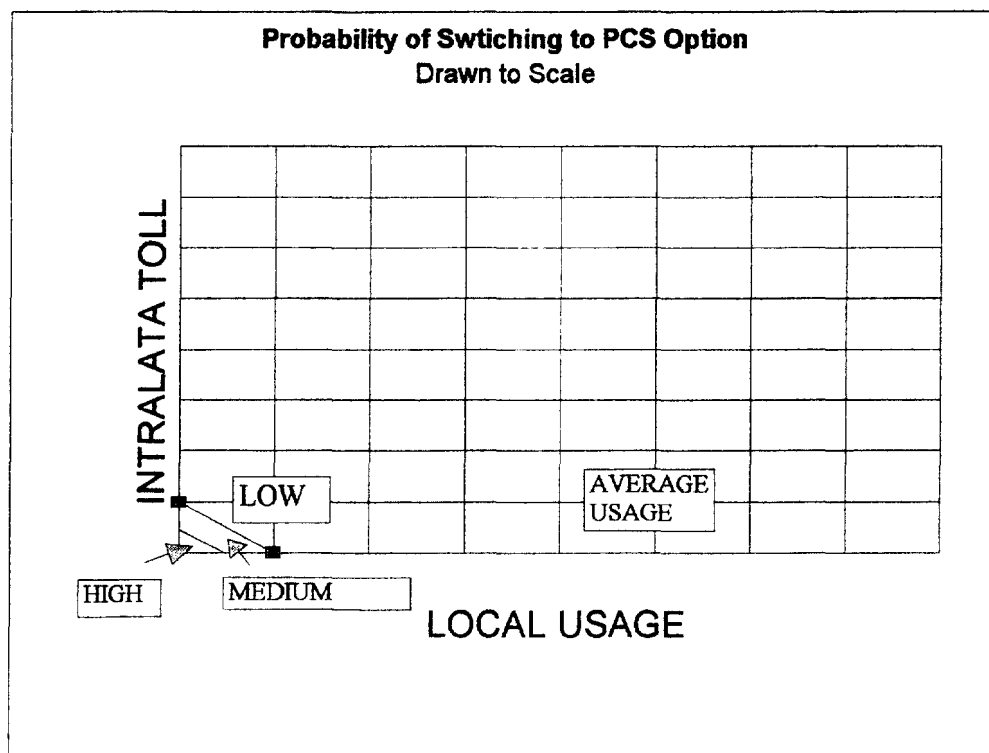
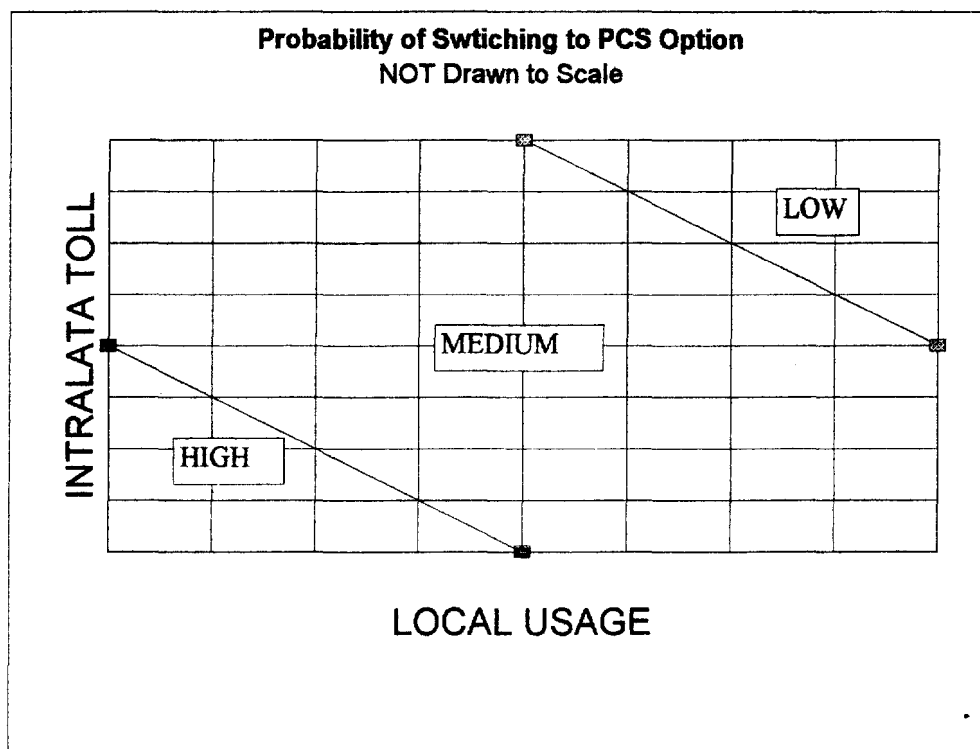
The claim that PCS is a substitute for wireline and should be considered a competitor for purpose of section 271 petitions is based on deception by distortion. It should be clearly and decisively rejected by the FCC. The Department of Justice reached a similar conclusion.

The Commission has determined that the Track A "competing" requirement can be satisfied by providers that offer an "actual commercial alternative" to the BOC telephone exchange service, but has not yet addressed whether the statutory requirements of Track A require an assessment of the technical and economic substitutability between competitors and the BOC services, and, if so, the degree of substitutability that is needed to establish that a provider is "competing." BellSouth argues that any commercially available provider of telephone exchange services can satisfy a Track A facility-based competitor requirement, even if its services are only substitutable for BellSouth's to a relatively marginal degree.

From an economic perspective, the substitutability of products (or services) can be assessed on a wide array of evidence, including analyses of the technical characteristics of products and their uses; the manner which products are marketed; the relative prices of products; and analyses of the frequency and

³³It can frequently be shown that significant residential market segments could lower their average bill if they switch to measured service. However, where optional measured service is available, they still do not.

FIGURE 1



circumstances under which customer shift from one product to another. As the evidence in the record makes clear, PCS isn't substantially more expensive than wire line service for the great majority of consumers. In addition, PCS services are priced differently; PCS subscribers pay usage charges for outgoing calls (whereas wire line local services are often flat rated), and for incoming calls (which are usually free with wire line service). In lieu of these basic economic considerations, we concur with the Commission's decision to refrain from treating PCS as a substitute -- at least in the antitrust sense -- for wire line service.³⁴

Once PCS is eliminated as a facilities based competitor, any claim to a Track A application collapses.

2. MOVING FROM TRACK A TO TRACK B

Because Congress understood that entry would be difficult and there would be a variety of incentives and interests at work as the local monopoly was dismantled, Congress gave the RBOCs an alternative approach, known as Track B. If no request for interconnection were made by a facilities-based competitor, or it could be shown that the competitor did not negotiate in good faith or failed to meet agreed upon timetables, the RBOC could be allowed to enter the in-region InterLATA despite the lack of a facilities-based competition. To qualify for Track B, RBOCs have to show that Track A does not apply and it offers to provide interconnection and access subject to an approved Statement of Generally Available Terms (SGAT) (see Attachment 2 Chapter 2, section B). BST has again tried to claim that even though requests for interconnection have been made and competitors are trying to obtain unbundled network elements and get into the market, it should be allowed to switch to Track B.³⁵

³⁴DOJ Louisiana, pp. 6..8.

³⁵BST Application, p. 21.

The ALJ made it clear that BST in Louisiana had received such a request. BST has not tried to make a showing that the requesting party (ACSI) has failed to act properly under section 271 (c)(1)(A). Lacking a facilities-based competitor in Louisiana and failing to make a showing the potential competitors have not lived up to their part of the bargain, BST has tried to redefine the standard by which the competitive situation should be measured (see Attachment 2 Chapter 2, section C).

Since the facts are the same, the conclusion reached by the Florida staff is relevant --

- o BST does not meet the Track A requirement,
- o can not use the Track B requirement,
- o would not meet the Track B requirement, even if it could proceed under that option, and
- o has incorrectly tried to combined Track A and Track B to get around its fundamental failure to meet either.

The Louisiana application adds the twist that BST has not proven that PCS is a competing provider at the state or federal levels.

Table 3 summarizes the status of the section 271(c)(1) test in Louisiana.

TABLE 3
BELL SOUTH- LOUISIANA
SECTION 271 [C] (1) COMPLIANCE EVALUATION
FACILITIES BASED COMPETITION

| ENTRY CONDITION | STATUS |
|--|--------|
| TRACK A CONDUCT | |
| 1) REQUEST | YES |
| 2) GOOD FAITH NEGOTIATION | YES |
| 3) ON-TIME IMPLEMENTATION | YES |
| 4) TRACK B AVAILABLE | NO |
| TRACK A CONDITIONS | |
| 1) PROVIDING ACCESS | NO |
| 2) APPROVED AGREEMENT | YES |
| 3) PREDOMINANTLY OWN FACILITIES FOR BUSINESS | YES |
| 4) PREDOMINANTLY OWN FACILITIES FOR RESIDENTIAL | NO |
| 5) SERVICE TO BUSINESS | YES |
| 6) SERVICE TO RESIDENTIAL | NO |
| TRACK B | |
| 1) GENERALLY OFFERS TO PROVIDE ACCESS AND INTERCONNECTION | NO |
| 1) SGAT APPROVED OR PERMITTED TO TAKE EFFECT | NO |
| COMPETITION ANALYSIS | |
| 1) IRREVERSIBLE | NO |